

STATE OF VERMONT
PUBLIC SERVICE BOARD

Temporary Rule on Sound Levels from Wind)
Electric Generation Facilities)

Order entered: 7/27/2016

ORDER ADOPTING TEMPORARY RULE

Today, the Vermont Public Service Board (“Board”) adopts Public Service Board Rule 5.700, a temporary rule governing sound emission levels for wind electric generation facilities.¹

On June 13, 2016, Public Act No. 174 (2016 Adj. Sess.) (“Act 174”) was signed into law. Section 12(b) of Act 174 reads as follows:

(b) On or before 45 days after the effective date of this section, the Board shall adopt temporary rules on sound levels from wind generation facilities using the process under 3 V.S.A. § 844. The rules shall be effective on adoption and shall apply to applications for such facilities under 30 V.S.A. § 248 filed on or after the effective date of this section. Until the Board adopts temporary rules pursuant to this subsection (b), the Board shall not issue a certificate of public good for a wind generation facility for which an application is filed on or after the effective date of this section.

(1) The standard under 3 V.S.A. § 844(a) regarding imminent peril to public health, safety, or welfare shall not apply to the rules to be adopted under this subsection. This subsection employs the process set forth in 3 V.S.A. § 844 solely for the purpose of using an existing rulemaking procedure to adopt temporary rules in a short time frame.

(2) With respect to sound levels from wind generation facilities, these rules shall state:

(A) standards that apply to all such facilities;

(B) a methodology for determining sound levels and measurement locations for each such facility on a case-by-case basis; or

(C) standards that apply to one or more categories of such facilities, with a methodology for determining sound levels and measurement locations for other such facilities on a case-by-case basis.

1. A copy of the temporary rule and associated filing documents are attached to this Order.

(3) These rules shall not allow sound levels that exceed the lowest maximum decibel levels authorized in any certificate of public good that contains limits on decibel levels issued by the Board for a wind generation facility before the effective date of this section. For the purpose of this subdivision (3), there shall be two categories of wind generation facilities:

(A) facilities with a plant capacity as defined in 30 V.S.A. § 8002 of 500 kilowatts (kW) or less; and

(B) facilities with a plant capacity as defined in 30 V.S.A. § 8002 greater than 500 kW.

(4) Notwithstanding 3 V.S.A. § 844(b), rules adopted pursuant to this subsection (b) shall remain in effect until the earlier of the following:

(A) the effective date of permanent rules finally adopted under subsection (a) of this section; or

(B) the July 1, 2017 deadline stated in subsection (a), as it may be extended pursuant to that subsection.

Pursuant to this legislative mandate, the Board invited comments and proposals from the public to guide the development of the temporary rule. Proposals, comments, and reply comments were received from approximately 40 different individuals and entities. These filings contained a significant amount of information for the Board to consider.

Pursuant to Act 174, the Board was allotted a period of 45 days to research and develop the temporary sound rule. The time constraints imposed by this deadline required the Board to move swiftly in developing the temporary rule that we adopt today. As a result, and out of necessity, we relied on the most stringent measures that the Board has imposed on wind electric generation facilities to date, while at the same time retaining the discretion to impose more stringent standards on a case-by-case basis if a petition or application for a wind electric generation facility is filed before the Board is able to develop and adopt a permanent rule governing sound emissions from these facilities.

We realize that participants advocated for a variety of standards, both stricter and more lenient than the ones set forth in the temporary rule that we adopt today. Some commenters advocated for complex provisions that would have required a level of review not possible in the time allotted for the temporary rule. However, the standards we adopt today are temporary and will remain in effect only until the earlier of the effective date of a permanent rule, or July 1,

2017, whichever is earlier.² We intend to commence the process for developing and adopting a permanent rule governing sound emissions from wind electric generation facilities in the immediate future. During that process, we anticipate being able to more fully vet and understand the various positions advocated by the differing interests in this important matter. Accordingly, the temporary rule should not be viewed as a precursor to what standards and requirements may be included in the final rule.

The Board would like to thank the many participants who took the time and expended the effort to submit materials for the Board's consideration. The Board will provide notice of the commencement of the rulemaking process for the permanent rule to the individuals and entities on the email service list for this temporary rule.

SO ORDERED.

2. The July 1, 2017, date can be extended by the Legislative Committee on Administrative Rules pursuant to § 12(a) of Act 174.

Dated at Montpelier, Vermont, this 27th day of July, 2016.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/Margaret Cheney</u>)	BOARD
)	
)	OF VERMONT
<u>s/Sarah Hofmann</u>)	

OFFICE OF THE CLERK

FILED: July 27, 2016

ATTEST: s/Judith C. Whitney
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)